UNITED NATIONS

E/NL.1992/16
21 May 1992

ENGLISH ONLY*
ORIGINAL: DARI

LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

AFGHANISTAN

Communicated by the Government of Afghanistan

NOTE BY THE SECRETARIAT

(a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.

(b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

LAW ON COMBATING DRUGS, 1991

CHAPTER ONE

GENERAL PROVISIONS

Article one:

This law has been passed in order to combat the cultivation of opium poppy and cannabis; production, processing, buying, selling, trading, keeping and trafficking of drugs; and for treatment and rehabilitation of drug addicts.

Article two:

The objectives of combating drugs are as follows:

1. To prevent cultivation of opium poppy and cannabis.
2. To prevent production, processing, buying, selling, importing, exporting, keeping and trafficking of drugs.
3. To coordinate and intensify the struggle against drugs on a national and international level.
4. To attract the cooperation and assistance of all national and international organizations in the task of combating drugs.
5. To persuade farmers to cultivate other crops instead of opium poppy and cannabis, and to provide them with technical and material assistance.

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6. To establish detoxification/treatment and rehabilitation centres for drug addicts in order to reintegrate them into society.

7. To take preventive measures and to punish those who cultivate opium poppy and cannabis as well as produce, process, sell, buy, import, export, supply, keep and smuggle illicit drugs.

Article three:

This law defines drugs as substances which cause addiction, confusion of mind, alter human behaviour, cause complicated diseases and other social and health problems.

Article four:

According to this law, drugs are identified as follows:

1. Opium and its derivatives.

2. Cannabis and its derivatives.

3. All other drugs and their chemical derivatives mentioned in the International Convention as psychoactive substances. (Annex No. I to this law). (Note: Annex No. I was not furnished).

CHAPTER TWO

PROHIBITION AGAINST CULTIVATION OF OPIUM POPPY AND CANNABIS (Hashish)

Article five:

Cultivation of opium poppy and cannabis is prohibited within the boundaries of the Republic of Afghanistan.

Article six:

1. The person who cultivates opium poppy or cannabis - depending on the circumstances, its quantity and quality - will be sentenced to short-term imprisonment or fined up to thirty-six thousand Afghanis, or both.

2. The poppy and cannabis crops are to be destroyed by the law enforcement authorities after obtaining permission from the court.

Article seven:

In order to control the cultivation of poppy and cannabis, commissions comprised of representatives from the Ministries of Internal Affairs, Defence, State Security, Agriculture and Land Reform will be established in the capital and each province. These commissions will function under the supervision of the prosecuting attorneys.

Article eight:

The commissions mentioned in article 7 have the following responsibilities:

1. Prevention of cultivation of opium poppy and cannabis within the boundaries of the country in cooperation with the personnel of the Ministries of Internal Affairs, State Security and the Frontier Forces.

2. Destruction of opium poppy and cannabis crops by all possible ways and means.

3. Persuasion of farmers to raise substitute crops and provision of assistance to them in this regard from national and international organizations.

4. Report to the Ministry of Agriculture and Land Reform in order to obtain assistance from national and international organizations for the small farmers who will obtain comparatively less yield if they stop opium poppy and cannabis cultivation.

Article nine:

In order to prevent the cultivation of opium poppy and cannabis, the Ministry of Agriculture and Land Reform in cooperation with its professional personnel is obliged to launch a vast and comprehensive publicity campaign in this respect.

Article ten:

The Ministry of Agriculture and Land Reform will give incentives to small farmers in opium poppy and cannabis growing areas if they voluntarily stop its cultivation. The incentives will be as follows:

1. Provision and distribution of agricultural equipment with favourable terms.
2. Priority during distribution of improved seeds, fertilizer and agricultural chemicals.
3. Provision of marketing facilities in cooperation with the Ministry of Commerce, and purchasing of the crop production if necessary.
4. Provision of loans with easy terms and conditions for the establishment of veterinary, horticultural and poultry farms;
5. Granting of other assistance.

Article eleven:

In order to prevent cultivation of opium poppy and cannabis the Government will sign agreements with foreign countries and organizations for cooperation and technical and financial assistance in accordance with legislative documents.

CHAPTER THREE

DRUG TRAFFICKING/SMUGGLING

Article twelve:

1. Drug smuggling is forbidden. The violators will be punished in accordance with this law.

2. According to this law producing, processing, selling, buying, importing, exporting, keeping, and carrying of drugs without government permission is considered as smuggling.

Article thirteen:

In order to meet medical needs the Ministry of Public Health, in observance of international conventions can cultivate, produce, process, import, export, trade, keep and transport drugs.

Article fourteen:

Afghan nationals in case of having knowledge and being aware of drug smuggling or observing such activities should inform the concerned government authorities.

Article fifteen:

Detection and arrest of people involved in drug smuggling is the responsibility of the Drug Control Department, Police, Customs and Prosecuting Attorney.

Article sixteen:

The Afghan nationals can help the concerned authorities in the detection and seizure of drugs.

Article seventeen:

Detection, investigation and trial of people involved in drug smuggling will be carried out in accordance with the provisions of the penal code and other legislative documents.

Article eighteen:

1. When seizing drugs, detectives are obliged to prepare a report about the scene of the incident with a description of the kind and amount of drugs, the identity of the accused and the place of the incident. Without delay they should send the seized drugs and vehicle together with a copy of the report to the customs authorities of the province and attach a second copy of the report on the investigation file. A third copy of the report will be sent to the central office for Drug Control.

2. Report of the incident should be signed by the accused and witnesses if any.

Article nineteen:

Detectives, investigators, prosecutors and judges are obliged to prosecute and bring to trial the accused as soon as possible.

Article twenty:

The person involved in opium smuggling is to be punished as follows:

1. If the amount of opium is up to 50 grams the punishment will be a short-term imprisonment.

2. If the amount of opium is from 50 grams up to 1 kg the punishment will be a mid-term imprisonment.

3. If the amount of opium is from 1 kg up to 10 kg the punishment will be a long-term imprisonment (up to 7 years).

4. If the amount is more than 10 kg the punishment will be more than 7 years imprisonment or imprisonment for life.

Article twenty-one:

The person involved in cannabis (hashish) smuggling is to be punished as follows:

1. If the amount of cannabis is up to 50 grams the punishment will be a short-term imprisonment (up to three months).

2. If the amount of cannabis is from 50 grams up to 1 kg the punishment will be a short-term imprisonment (more than three months).

3. If the amount is from 1 kg up to 10 kg, the punishment will be long-term imprisonment.

4. If the amount exceeds 10 kg, the punishment will be a long-term imprisonment.

Article twenty-two:

The person involved in smuggling one of the chemical derivatives of drugs will be punished as follows:

1. If the amount is up to 10 grams, punishment will be a mid-term imprisonment (up to 2 years).

2. If the amount is from 10 grams up to 50 grams, punishment will be a mid-term imprisonment of more than 2 years.

3. If the amount is from 50 grams up to 1 kg, punishment will be long-term imprisonment.

4. If the amount exceeds 1 kg, punishment will be imprisonment for life.

Article twenty-three:

The person involved in smuggling other kinds of drugs, depending on the quantity and quality of the drugs, will be sentenced to mid- or long-term imprisonment.

Article twenty-four:

In addition to the punishment accorded to the smuggler, the court also will confiscate the drug irrespective of its amount and price.

Article twenty-five

1. If the drug smuggler resorts to armed resistance against the detectives but it does not result in the death of any person, in addition to confiscation of the drugs and weapons, he will be sentenced to imprisonment for life.

2. If the armed resistance of the smuggler results in the death of the detective or others assisting the detectives, he will be sentenced to death.

Article twenty-six:

1. The drugs confiscated on the decision of the court can be destroyed whenever the prosecutor proposes so and after obtaining the opinion of the Ministry of Public Health.

2. The destruction of the drugs is undertaken by a committee headed by a prosecutor and under the supervision of representatives of the Ministries of Public Health, Internal Affairs, Finance, Commerce and Agriculture.

Article twenty-seven:

The person who imports or uses equipment and special chemicals for the production and processing of drugs, in addition to the confiscation of the above, will be sentenced to a long-term imprisonment or imprisonment for life.

Article twenty-eight:

The person who is not the actual owner of the drug-production and processing factory but participates in the work and obtains an income from it, will be punished as an accomplice to the crime.

Article twenty-nine:

The person transporting drugs in his own vehicle without having prior permission from the Government will have his vehicle confiscated besides confiscation of the drugs in addition to the punishment foreseen in this chapter. This applies if the amount of heroin, chemical and other manufactured drugs called psychoactive exceeds 500 grams, opium exceeds 20 kg, or any other kind of drugs that amount to half the value of the vehicle.

Article thirty:

If a person prepares a special place in his vehicle and utilizes it for the carrying of drugs, the vehicle will be confiscated irrespective of the amount of drugs being trasnported, in addition to the punishment and confiscation of the drugs.

Article thirty-one:

If it is proved that in spite of having knowledge of drugs in the vehicle, the driver attempts to transport them, he will be accorded punishment as an accomplice to the crime.

Article thirty-two:

If the drug smuggler is caught together with the owner of the vehicle and it is proved that the owner of the vehicle was aware of the transportation of drugs, he will be punished as an accomplice to the crime.

Article thirty-three:

If smuggling of the drug is carried out by two or more persons, they will be accorded the maximum punishment as foreseen in articles twenty through twenty-four of this law.

Article thirty-four:

When a person resorts to drug smuggling through a drug-trafficking network, the founder of the network and the smuggler - depending on the circumstances - will be sentenced to imprisonment for life.

Article thirty-five:

If government personnel take part in establishing a drug-trafficking network, or provide in some way facilities for smuggling, and it is proved, the perpetrators - depending on the circumstances - will be sentenced to imprisonment for life.

Article thirty-six:

The person who assists the Government in locating or capturing the drug-trafficking network - depending on the circumstances, quality and quantity of the drug - will be given a commendation or an award in the form of cash money by the Government.

CHAPTER FOUR

USING DRUGS AND OTHER INTOXICANTS

Article thirty-seven:

The person who uses drugs will be punished according to the provisions of this law in observance of article one of the Penal Code.

Article thirty-eight:

If a person uses drugs but is not an addict, depending on the circumstances, he will be sentenced to a short-term imprisonment or will be fined from three thousand up to thirty-six thousand Afghanis.

Article thirty-nine:

If a person forces someone to use drugs, he will be sentenced to a long-term imprisonment.

Article forty:

The person who makes arrangements for the use of drugs or encourages, persuades and spreads the use of drugs will be sentenced to long-term imprisonment.

Article forty-one:

1. The person who provides a special place for the use of drugs - depending on the circumstances - will be sentenced to long-term imprisonment.

2. In addition to the punishment foreseen in clause (1) of this article, the court will also order the confiscation of the drugs and the instruments used for taking the drugs.

Article forty-two:

1. If the managers of hotels, restaurants or stores offer drugs, they will be punished as foreseen in article forty-one.

2. If the owners of hotels, restaurants or stores in spite of having knowledge about the crime mentioned in clause (1) of this article, do not stop their managers from committing this act, or do not inform the concerned authorities, they will be punished as an accomplice to the crime.

Article forty-three:

1. If a person is seen in public, on the street, public park or other public gathering places, while being intoxicated and mentally disturbed, or causing trouble to others, he will either be sentenced to short-term imprisonment (more than three months) or fined a sum of nine thousand up to thirty-six thousand Afghanis.

2. If the perpetrator of the crime mentioned in clause (1) of this article, repeatedly commits the said crime, he will either be sentenced to short-term imprisonment (more than six months) or fined between eighteen thousand up to thirty-six thousand Afghanis.

CHAPTER FIVE

PROTECTIVE ARRANGEMENTS AND TREATMENT OF DRUG ADDICTS

Article forty-four:

Instead of sentencing the drug addict to imprisonment, the court will order the detention of the addict in a related health centre for treatment purposes. This period cannot exceed two years.

Article forty-five:

1. The concerned health organization is obliged to report to the respective court through the office of the prosecutor every 15 days on the health condition of the addict sentenced to detention.

2. On the basis of the report received, the court can abrogate or extend the detention of the drug addict.

3. In respect of this article the authorized court is the court that passed the final decision.

Article forty-six:

The drug addict who is sentenced to imprisonment for committing a felony or misdemeanor crime, can be ordered by the court - in addition to the punishment accorded for the committed crime - to undergo treatment whenever proposed by the concerned health organization, prosecutor, police or on request of his relatives.

Article forty-seven:

If the drug addict has been sentenced more than once by the court for using drugs, the court in addition to the main punishment, can impose a ban on the addict's movement preventing him from going to certain places. The tenure of this ban cannot exceed three years.

Article forty-eight:

The period of detention of the drug addict in the respective health centre can be counted in the tenure of his imprisonment term.

Article forty-nine:

The Ministry of Public Health is obliged to make the necessary arrangements for the treatment of drug addicts.

CHAPTER SIX

ADMINISTRATION RESPONSIBILITIES

Article fifty:

The Ministry of Public Health is obliged to establish treatment and rehabilitation centres for drug addicts.

Article fifty-one:

In order to combat the cultivation of opium poppy and cannabis, and fight against drug smuggling, the Ministries of Agriculture and Land Reform, Public Health, Internal Affairs, State Security and Defence are obliged to adopt the following measures:

1. Prevention of opium poppy and cannabis cultivation through all possible means.
2. Obtaining assistance from international and regional organizations and other countries through the Ministry of Foreign Affairs.
3. Coordination of efforts to intensify the struggle against production and smuggling of drugs and establishing regional cooperation.
4. Persuasion and encouragement of farmers towards crop substitution of opium poppy and cannabis.
5. Provision of assistance to farmers.

Article fifty-two:

In order to combat drug abuse, the Ministry of Education and Ministry of Higher and Vocational Education are obliged to include drug related subjects into the curriculum of their educational institutions.

Article fifty-three:

The Ministries of Culture and Information, Public Health, Religious Affairs and "Awqaf" and the organizations protecting people's rights are obliged to launch publicity campaigns through mass media against production, smuggling and use of drugs.

Article fifty-four:

In order to combat cultivation, smuggling and use of drugs, the Ministry of Foreign Affairs is obliged to adopt the following measures:

1. Attracting assistance from international and national organizations for the farmers.
2. Acquiring assistance from international and national organizations to equip and expand hospitals and rehabilitation centres for drug addicts.
3. Collecting reports, publications and information material related to the struggle against drugs from national, regional and international organizations and translating and distributing these to the organizations protecting people's rights.
4. Preparing the basis for the joining of the Republic of Afghanistan to international conventions combating cultivation and smuggling of drugs.

5. Preparing the ground for the signing of bilateral and multilateral agreements with neighbouring and other drug producing countries for cooperation in detection, arrest, trial and prosecution of the people accused of drug smuggling.

CHAPTER SEVEN

MISCELLANEOUS PROVISIONS

Article fifty-five:

The Ministry of Public Health is obliged to draft a by-law concerning production, processing, import, export, puchasing, selling, supplying, keeping, transporting and legal use of drugs for medical purposes. This by-law is to be forwarded for legal processing.

Article fifty-six:

This Law is effective upon promulgation and publishing in the Official Gazette and mass media.

Article fifty-seven:

By enacting this law, the following laws are abrogated:

1. Opium regulations dated 9.5.1335 (1956). 1/
2. Regulation concerning cultivation, trade, export, import and use of opium in Afghanistan, dated 2.9.1336 (1957). 2/
3. Provision of anti-drug smuggling law and its amendments.
4. Other provisions opposing this law.

Notes by the Secretariat:

1/ E/NL.1956/27

2/ E/NL.1958/13